IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 594 of 2006
Date of decision 18 .10.2006

Kamla Devi .. petitioner

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr.RK Malik, Advocate for the petitioner
Mr. Harish Rathee, Sr. DAG Haryana.
Mr. San jay Chauhan, Advocate

M.M.Kumar, J.

The petitioner who is widow of late Shri Sunehra has approached this Court with a prayer for issuance of a direction to the respondents to release the family pension and other benefits to her. It is also prayed that the condition imposed in the order of regularisation dated 13.1.2004 (Annexure P.3) regularising the services of her husband with immediate effect be set aside.

The facts are not in dispute. The husband of the petitioner was appointed as Sweeper in Municipal Committee , Ratia- respondent no.4. In pursuance of t policy/ instructions his services were regularised on 13.1.2004 with immediate effect. However, he died on 28.10.2004. It has been asserted that when the services of the petitioner were regularised he was subjected to medical examination and was found fit by the Civil Surgeon, Fatehabad on 14.1.2004 (Annexure P.4). The petitioner sent a representation to respondent no.2 i.e. the Director, Urban Development, Haryana, Chandigarh on 12.8.2005 . Earlier the petitioner had requested the Municipal Committee, Ratia, respondent no.4 for granting her the family

pension and other benefits and the Municipal Committee had sought clarification from respondent no.2 as is evident from its communication dated 16.3.2005(Annexure P.5). The afore-mentioned facts remained unchallenged although the prayer for regularisation from the prospective date has been opposed on the ground that the afore-mentioned date was never challenged by the deceased Sunehra.

Mr. R.K.Malik, learned counsel for the petitioner has argued that the petitioner is entitled to the grant of family pension under Clause 4 of the Family Pension Scheme, 1964. Learned counsel has placed reliance on a Division Bench judgement of this Court in the case of Savitri Devi v. State of Haryana and others 1996(2) RSJ 854 in which this Court has interpreted clause 4 of the Family Pension Scheme to lay down that there was no requirement of completion of one year for grant of family pension if at the time of entry into regular service, the deceased employee was medically examined and found fit. The same view has been taken by this Court in the case of Sundra Devi v. Uttar Haryana Bijli Vitran Nigam Ltd. 2005 (4) SCT 634. He has also placed reliance on a Division Bench judgement of this Court in the case of CWP No. 6183 of 2006 decided on 17.8.2006 (Kamlesh v. State of Haryana). He has also submitted that the petitioner is entitled to compassionate appointment and other benefits of ex-gratia scheme as framed by the respondent-State.

Mr. Harish Rathee, learned State counsel has repeated the stand taken by the respondent- State in the cases of Savitri Devi (supra); Sundra Devi (supra) and Kamlesh (supra). He has also submitted that the petitioner has never brought to the notice of the respondents the claim of family pension as per the issue raised now before this Court.

Having heard the learned counsel for the parties, we are of the view that the stand of the respondent- State is unholy and unwarranted because once this Court from 1996 has been rejecting the stand which has again been repeated today then there was no justification for them to reject the claim of the petitioner by taking up the same stand. The petitioner has sent representation dated 12.8.2005 (Annexure P.6) wherein specific claim for family pension has been made. The learned State Counsel is not correct in arguing that no such claim was ever made. A reference to the representation may be made in para 7 of the petition and in the corresponding para 7 of the reply the same has been admitted as a matter of record. We are of the view that the case of the petitioner is squarely covered by the Division Bench judgement of this Court in the case of Savitri Devi (supra) as well as Kamlesh's case (supra) in so far as her claim for family pension is concerned. In Savitri Devi's case (supra) the Division Bench interpreted clause 4 of the Family Pension Scheme and has held as under:

> " The mandate of the aforementioned provision appears to be that in case the Government servant at the time of entry into service produces a Medical Certificate of Fitness, the family would be entitled to Family pension even if he dies within less than one year. Concededly, the husband of the petitioner did submit the Medical Certificate of Fitness, copy Annexure P.1.
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> The only interpretation which can be placed upon the Scheme as reproduced above is that even if the deceased Government employee does not complete one year of continuous service, his dependents would nevertheless be entitled to the grant of family pension provided the deceased

was medically examined and found fit and a Medical Certificate of Fitness is produced before entry in Government Service from a competent Medical Officer. The completion of one year continuous service is, therefore, wholly irrelevant in view of the phraseology of the Family Pension Scheme."

The afore-mentioned view has been considered, followed and applied in large number of judgements including Sundra Devi's case (supra) CWP No. 11285 of 2004 decided on 31.1.2005 (Krishna Devi v. U.H.B.V.N.Ltd.); CWP No. 1083 of 2003 decided on 28.7.2003 (Meena Kumari vs. UHBVN Ltd.); CWP No. 86 of 2003 decided on 28.7.2003 (Kusum Devi v. UHBVNL) Rama Devi v. State of Haryana 2005(3) RSJ 695 ; and Shalini Devi v. HVPNL 2006(1) RSJ 661.

It is unfortunate that on the same issue a litigant is compelled to approach the Court. Once the issue has been settled by a catena of judgements then pushing a litigant to the Court is wholly unwarranted, we therefore, depricate this practice adopted by the respondent- State.

In view of the above, the writ petition is allowed with costs of Rs. 5000/-. A direction is issued to the respondents to release family pension to the petitioner as she is entitled to the same by virtue of afore-mentioned judgements. The needful shall be done within a period of three months from the date a certified copy of this order is received by the respondents. The petitioner shall make a detailed representation with regard to compassionate appointment for herself or for her son and for other ex-gratia benefits. If such a representation is made through proper channel within a period of four weeks from today under registered AD cover with a copy in advance to the respondent no.2, then the same shall be considered

and decided by him in accordance with law.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

18.10.2006
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